

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
BERT DAY)
d.b.a. MASON COUNTY LANDFILL,)
Appellant,)
v.)
OLYMPIC AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB Nos. 693 and 703

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

THIS MATTER being appeals of two civil penalties for alleged open burning violations; having come on regularly for hearing before the Pollution Control Hearings Board the the 22nd day of April, 1975, at Lacey, Washington; and appellant, Bert Day, d.b.a. Mason County Landfill, appearing pro se and respondent, Olympic Air Pollution Control Authority, appearing through its attorney, Fred D. Gentry; and Board members present at the hearing being Chris Smith, W. A. Gissberg and Walt Woodward; and the Board having considered the sworn

1 testimony, exhibits, records and files herein and having entered on
2 the 2nd day of May, 1975, its proposed Findings of Fact, Conclusions
3 of Law and Order; and the Board having served said proposed Findings,
4 Conclusions and Order upon all parties herein by certified mail,
5 return receipt requested and twenty days having elapsed from said
6 service; and

7 The Board having received no exceptions to said proposed Findings,
8 Conclusions and Order; and the Board being fully advised in the
9 premises; now therefore,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
11 Findings of Fact, Conclusions of Law and Order, dated the 2nd day of
12 May, 1975, and incorporated by this reference herein and attached
13 hereto as Exhibit A, are adopted and hereby entered as the Board's
14 Final Findings of Fact, Conclusions of Law and Order herein.

15 DONE at Lacey, Washington, this 3rd day of June, 1975.

16 POLLUTION CONTROL HEARINGS BOARD

17 Chris Smith
18 CHRIS SMITH, Chairman

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20 W. A. GISSBERG, Member

21 Walt Woodward
22 WALT WOODWARD, Member

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27 FINAL FINDINGS OF FACT,
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These related matters, appealing two civil penalties of \$250 each for alleged open burning violations of respondent's Regulation I, came seriatim before the Pollution Control Hearings Board (Chris Smith, presiding officer, W. A. Gissberg and Walt Woodward) as formal hearings in the Board's Lacey hearing room on April 22, 1975.

In both hearings, appellant appeared pro se and respondent appeared through Fred D. Gentry. Eugene Barker, Olympia court reporter, recorded the proceedings.

In both hearings, witnesses were sworn and testified. Exhibits

EXHIBIT A

1 were admitted.

2 From testimony heard and exhibits examined, the Pollution Control
3 Hearings Board makes these

4 FINDINGS OF FACT

5 I.

6 In both matters, the Board took notice that respondent, pursuant to
7 Section 5, chapter 69, Laws of 1974, 3rd Ex. Sess., has filed with this
8 Board a certified copy of its Regulation I containing respondent's
9 regulations and amendments thereto.

10 II.

11 Section 9.01(b) of respondent's Regulation I requires a permit from
12 respondent for open burning. Section 9.01(g) forbids open fires containing,
13 among other things, petroleum products, paints and rubber products.
14 Section 9.01(e) states that it shall be prima facie evidence that the
15 person who owns or controls property on which occurs an open fire,
16 prohibited by Regulation I, has caused or allowed said fire. Section 3.27
17 authorizes a penalty of not more than \$250 for any violation of
18 Regulation I.

19 III.

20 Appellant, by virtue of a contract with Mason County, is and was on
21 July 17, 1974 and August 15, 1974 an independent contractor in charge and
22 control of the Mason County Solid Waste Disposal Landfill (hereinafter,
23 Landfill), located on county-owned land about five miles north of Shelton,
24 Mason County.

25 IV.

26 Appellant had some knowledge of respondent's open burning regulatio

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

and, from March 11, 1974 to May 31, 1974, held a valid open burning permit issued to him by respondent under Section 9.01 of respondent's Regulation I

V.

On July 17, 1974, three fires, including a 40-foot diameter accumulation of rubber tires, burned at the Landfill. Appellant acknowledged that the tires were placed in one pile, which was surrounded by an earthen fire break, but declared he does not know how the fire was ignited. Appellant, on July 17, 1974, did not have an open burning permit issued by respondent.

VI.

The above fires, observed by an inspector on respondent's staff in response to citizen complaint, resulted in appellant being served by respondent with a \$250 citation for violation of Section 9.01(b) and (g) of respondent's Regulation I. This citation is the subject of the appeal in PCHB No. 693.

VII.

Respondent presented no evidence of a prior violation by appellant of respondent's Regulation I. Respondent's control officer testified he was influenced, in part, in setting the \$250 maximum penalty in the above matter on an alleged violation by appellant of respondent's Regulation I on a date subsequent to July 17, 1974.

VIII.

On August 15, 1974, four or five dump-truck piles of processed wood waste from a mill, said piles also containing paint and glue cans, an oil filter and rubber products, burned at the Landfill. Appellant testified he does not examine waste wood loads brought to the Landfill by the

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

mill's truck and that "once in awhile we get stuff that shouldn't be there."
Appellant acknowledged that respondent, prior to August 15, 1974, advised
appellant that, as manager of the Landfill, he should examine contents of
refuse loads. Appellant, on August 15, 1974, did not have an open burning
permit issued by respondent.

IX.

The fires which burned on August 15, 1974, were observed by an
inspector on respondent's staff in response to citizen complaint. The
observation resulted in appellant being served by respondent with a \$250
citation for violation of Section 9.01(b) and (g) of respondent's
Regulation I. This citation is the subject of the appeal in PCHB No. 703.

X.

The Landfill, managed by appellant and his son, has no night watch
and is not equipped with fencing to restrict dumping during hours when
appellant is not present. There is no adequate policing of waste deposited
at the Landfill both as to prohibited material and as to material which
may be smoldering at the time of deposit.

XI.

Any Conclusion of Law hereinafter recited which may be deemed to be a
Finding of Fact is adopted herewith as same.

From these Findings, the Pollution Control Hearings Board comes to
these

CONCLUSIONS OF LAW

I.

With considerable regret (see Conclusion III), this Board finds that
appellant, being in technical control of the Landfill and not in

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

possession of an open burning permit from respondent, was in violation of Section 9.01(b) and (g) of respondent's Regulation I on July 17, 1974, and August 15, 1974.

II.

The maximum allowable penalty, invoked for the "first offense" violation of July 17, 1974, is unreasonable and improperly based, in part, on a subsequent violation. The "second offense" penalty for the violation on August 15, 1974, is reasonable.

III.

To this Board, appellant appeared to be a man trying to earn a living from a monthly contract payment from Mason County, augmented by what he and his son can salvage from the waste dumped by the public at the Landfill. His understanding of the nuances of air pollution regulations is not the greatest. This is not to criticize respondent for "picking on" appellant; in both instant matters, respondent properly took action against appellant, as the manager of the Landfill, in response to citizen complaints to billowing clouds of polluting smoke.

There are two other offenders in these matters but this Board is powerless to reach them except by these gratuitous comments. One is Mason County which provides neither fencing nor night watchman assistance to appellant in regulating a facility which obviously is open to abuse when not adequately policed. The other is the public, including industrial, commercial and citizen patrons of the Landfill, which conceals prohibited and inflammable materials in its deposits at the Landfill.

IV.

Any Finding of Fact herein which is deemed to be a Conclusion of FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Law is adopted herewith as same.

2 Therefore, the Pollution Control Hearings Board issues this

3 ORDER

4 The appeals are denied. The penalty in PCHB No. 693 is reduced to
5 \$100. The penalty of \$250 in PCHB No. 703 is sustained. Appellant is
6 directed to pay respondent a total of \$350 in satisfaction of both of
7 these matters.

8 DONE at Lacey, Washington this 2nd day of May, 1975.

9 POLLUTION CONTROL HEARINGS BOARD

10 Chris Smith
11 CHRIS SMITH, Chairman

12 W. A. Gissberg
13 W. A. GISSBERG, Member

14 Walt Woodward
15 WALT WOODWARD, Member

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27 FINDINGS OF FACT,
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